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MAY 3 1975
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IN THE SUPREME COURT OF THE UNITED STATES

ROBERT E. VANDERHIDE,
PLAINTIFF-PETITIONER

vs.

BROWN & SHARPE MANUFACTURING CO., INC.,
DEFENDANT-RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

JOHN W. ROBB
FRANK B. ROBB
ATTORNEYS FOR
PLAINTIFF-PETITIONER,
ROBERT E.VANDERHIDE
37750 EUCLID AVENUE
WILLOUGHBY, OHIO 44094

PROCEEDINGS BELOW

This petition seeks review of the judgment of the Court of Appeals for the Sixth Circuit issued as Mandate, January 30, 1975, in Case No. 74-1866, entitled Robert E. Vanderhide, Plaintiff-Appellant vs. Brown & Sharpe Manufacturing Co., Inc., Defendant-Appellee (Appendix 1). That judgment affirmed the judgment of the United States District Court for the Northern District of Ohio, filed May 21, 1974, in Civil Action No. C73-1025, entitled Robert E. Vanderhide, Plaintiff, vs. Brown & Sharpe, Defendant, (Appendix 2) dismissing Vanderhide's Notice of Appeal, filed April 17, 1974. Said Notice of Appeal sought review of judgment of said District Court, filed January 28, 1974, (Appendix 3) granting summary judgment in favor of Brown & Sharpe, and dismissing Vanderhide's Complaint for Patent Infringement and Unfair Competition

by Brown & Sharpe. The District Court's judgment filed January 28, 1974, was made pursuant to Brown & Sharpe's "Motion to Dismiss Complaint for Failure to State a Claim on Which Relief Can be Granted", filed December 28, 1973. No trial on the merits was had.

JURISDICTION

The grounds for jurisdiction of this Court are:

1) That the Court of Appeals and the District Court have denied Petitioner his right to due process of law under the Constitution of the United States, and

2) Both Courts below so far departed from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

The jurisdiction for the original action for Patent Infringement and Unfair Competition were conferred on the District Court by Title 28, United States Code, Sections 1338

and 1400.

The judgments sought to be reviewed are those of the Court of Appeals and the District Court above set forth.

QUESTIONS FOR REVIEW

1) Petitioner asserts that both Courts below failed to recognize the basic contractual right of Vanderhide to take an appeal to the Court of Appeals from the District Court within three months from date of judgment of the District Court, filed January 28, 1974.

2) Petitioner asserts that both Courts below failed to follow accepted and usual course of judicial proceedings in not recognizing that for the purposes of Brown & Sharpe's "Motion to Dismiss Complaint", Brown & Sharpe admitted all allegations of the Complaint, including allegations of infringement and validity of the patent in suit, Brown & Sharpe's usurpation of Vanderhide's invention and Brown & Sharpe's fraud upon Vanderhide

by deceiving Vanderhide into believing that Brown & Sharpe had prior right to said invention.

3) By ignoring Brown & Sharpe's admission of those facts for purposes of said "Motion to Dismiss Complaint", both Courts below denied Petitioner his right to due process of law by denying the right to a trial on the merits.

ARGUMENT

It is recognized that Letters Patent issued by the United States Government is contract with the Patentee whereby, in consideration of the granting of a limited monopoly to the inventor for a specified term of years, the inventor is prevailed upon to disclose his invention to the public, and at the end of said term the public is given the right to use said invention without obligation to the inventor-patentee. One of the terms of this monopoly is the right of the patentee to avail

himself of the United States Courts in accordance with laws of the United States in effect at the time of the issuance of the patent. The laws in effect at the time of issuance of Vanderhide's patent gave him the right to civil action for infringement in United States Courts and included the right to appeal any adverse decision within three months after such adverse judgment. This right could not be abrogated by any subsequent change in the law; otherwise, the Government would be guilty of a breech of the contractual obligation. The failure of the Courts below to recognize this obligation results in denial of due process of law, including the right to a trial on the merits of the case. (See Patent Act of 1952, pages 71-72; also, 28 U.S.C.A. 2107, Reviser's Note).

In the accepted and usual course of judicial proceedings, it is fundamental that

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endant in a civil action in United States
rts admits, for purposes of a Motion to
miss Complaint, all of the allegations of
Complaint. Brown & Sharpe's admission
fraud and usurpation of invention nullify
wn & Sharpe's contention of laches on the
t of Vanderhide, contrary to the District
rt's holding in its opinion, filed January
1974, on which its judgment, filed January
1974, was based. The theory of laches is
equity remedy which cannot be availed of by
who has unclean hands tainted by fraud and
rpation of invention.

Likewise, the holding of the District
rt that Plaintiff's damages should be limit-
by the six year statute of limitations in
ent infringement suits, is erroneous in the
ht of the necessary admissions (for purposes
the Motion to Dismiss) of fraud and usurpa-
n of Vanderhide's invention since, if these
nts exist, Plaintiff does not have to rely

n the Patent Statute but may recover damages
or the unlawful use of his invention dating
ack to the commencement of such unlawful use.
he failure of the Courts below to follow the
sual and accepted course of judicial proceed-
ngs resulted in denial of the right to due
rocess of law, including the denial of the
ight of a trial on the merits.

ONCLUSION

The failure of the Courts below to recog-
ize the aforementioned inherent contractual
bligation of the Government to respect Peti-
ioner's right of appeal within three months
fter the District Court's judgment, filed
anuary 28, 1974, and the failure of the Courts
elow to recognize the effect of the filing of
rown & Sharpe's "Motion to Dismiss Complaint"
s constituting an admission, for the purposes
f the motion, of all the allegations of the
omplaint, resulted in such a departure from
he accepted usual course of judicial proceed-

ings as to require the Courts power of supervision.

This has resulted in denial of Petitioner's right to due process of law, including the right to a trial on the merits of the case, since the natural result of the recognition of Petitioner's rights above referred to would have been denial of Brown & Sharpe's Motion to Dismiss Complaint" necessitating proceeding with a trial of the case on its merits.

The intervention of this Court is therefore necessary and is respectfully requested.

Respectfully submitted,

JOHN W. ROBB
FRANK B. ROBB
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PETITIONER, ROBERT E. VANDERHIDE
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APPENDIX 1

NO. 74-1866

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT E. VANDERHIDE)

Plaintiff-Appellant)

vs.)

BROWN & SHARPE MANUFACTURING CO., INC.)

Defendant-Appellee)

C73-1025

Before: EDWARDS, MILLER and ENGEL, Circuit Judges.

This is an appeal from an order of the District Court entered May 21, 1974 granting the motion of appellee to strike a notice of appeal tendered to the District Court on April 15 and filed on April 17, 1974. Appeal was sought from an order dismissing appellant's complaint alleging patent infringement, judgment of dismissal having been entered on January 28, 1974. No motion for extension of time for filing this

notice of appeal was made until May 20, 1974. This matter was assigned to a Special Panel of this Court appointed under Rule 3(e), Rules of the Sixth Circuit.

Appellant claims that the District Court erred in striking the notice of appeal because the three-month period for filing appeals previously granted in patent infringement cases was saved by the Patent Act of 1952 and prevails over the 30-day requirement of Rule 4, Federal Rules of Appellate Procedure, the patent involved having been issued prior to the effective date of the 1952 Act. The Court finds this contention to be without merit.

It appearing therefore that the foregoing and other issues raised by appellant are so insubstantial as not to need further argument.

It is ORDERED that the judgment of the

District Court be and it is hereby affirmed. Rule 8, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

JOHN P. HEHMAN
Clerk

Issued as Mandate: January 30, 1975

COSTS: NONE

APPENDIX 2

GREEN, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. VANDERHIDE	)	
	)	
Plaintiff	)	Case No. C73-1025
	)	
v.	)	
	)	ORDER
BROWN & SHARPE MANUFACTURING CO., INC.	)	

UPON CONSIDERATION of defendant's motion to strike plaintiff's notice of appeal,

IT IS HEREBY ORDERED that the said motion is granted and the notice of appeal is stricken; see this Court's memorandum of even date.

United States District Judge

May 21, 1974

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. VANDERHIDE	)	
	)	
Plaintiff	)	Case No.
	)	C73-1025
v.	)	
	)	MEMORANDUM
BROWN & SHARPE MANUFACTURING CO., INC.	)	
	)	
Defendant	)	

GREEN, J.:

Defendant has moved to strike plaintiff's notice of appeal herein. The said notice of appeal was filed on April 17, 1974, 79 days subsequent to this Court's final order of January 28, 1974, from which the appeal is prosecuted. Plaintiff opposes said motion on two grounds:

1. That it is submitted more than ten days after the filing of the notice of appeal, and, therefore, is in contravention of Rule 3 of the Local Rules of Court; and

2. That the notice of appeal "was timely because filed within sixty (60) days after the Judgment of the District Court filed January 28, 1974, allowing for the deduction of eleven (11) intervening Sundays, ten (10) intervening Saturdays, and four (4) intervening holidays,..."

As to the argument based on the Local Rules of Court, the ten-day period referred to in Rule 3 applies to the time within which to serve opposition to a motion. It has no pertinence to this situation. Further, it is not a bar to the Court's exercise of discretion to receive a submission beyond the time so specified, which discretion this Court would exercise if necessary.

As to plaintiff's claim that the notice of appeal was filed within sixty days, that argument cannot be sustained in light of the specific provisions of Rule 26(a), Federal Rules of Appellate Procedure, which make it clear that only "when the period of

time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation." Rule 26(b) of the Appellate Rules provides that "the court may not enlarge the time for filing a notice of appeal." The maximum time within which a notice of appeal can be filed in a civil case is sixty days, Rule 4, Appellate Rules.

Plaintiff's notice of appeal not having been filed within sixty days of the judgment sought to be appealed, the motion to strike the notice of appeal must be granted.

United States District Judge

May 21, 1974

APPENDIX 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. VANDERHIDE, Plaintiff,	)	
vs	)	No. C73-1025
BROWN & SHARPE MANUFACTURING CO., INC., Defendant	)	JUDGMENT

The Court having found defendant herein entitled to summary judgment in its favor,

IT IS ORDERED that the complaint is dismissed at plaintiff's costs.

Ben C. Green
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. VANDERHIDE Plaintiff	)
v.	) Case No.) C73-1025
BROWN & SHARPE MANUFACTURING CO., INC. Defendant	) MEMORANDUM) AND ORDER

GREEN, J.:

This action is before the Court on defendant's motion to dismiss the complaint. However, as the motion is supported by matter beyond the complaint it must be treated as a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure.

Plaintiff's action for infringement of Patent No. 2,524,149 was commenced on October 2, 1973. That patent issued on October 3, 1950. Pursuant to the six-year statute of limitations for patent actions, 35 U.S.C. §286, any right of action which plaintiff had as an outgrowth of the patent

in suit would have expired no later than October 4, 1973, and plaintiff is barred from recovery for any acts of infringement prior to October 2, 1967 or subsequent to October 4, 1967, the date on which plaintiff's monopoly rights under the patent became public property.

The foregoing being the controlling law, defendant is entitled to summary judgment in its favor. In response to defendant's evidence as to all possible infringements, plaintiff has come forward with no evidence that any acts of infringement were committed during the two-day period for which a right of action exists. Further, in the Court's opinion, any right of action which plaintiff might have is barred by laches. From defendant's evidence it is clear that plaintiff has been aware of defendant's alleged infringement since at

least 1957, and possibly as far back as 1947, and has done nothing to enforce his rights, while conditions have changed over the years to defendant's detriment.

Summary judgment is entered in favor of defendant, dismissing plaintiff's complaint, at plaintiff's costs.

IT IS SO ORDERED.

_____
United States District Judge

January 22, 1974

APPENDIX 4

Filed December 28, 1973

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. VANDERHIDE, Plaintiff, v. BROWN & SHARPE MANUFACTURING CO., INC., Defendant.	Civil Action No. C73-1025 Judge Green NOTICE OF MOTION AND MOTION OF DEFENDANT TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

TO: JOHN W. ROBB
FRANK B. ROBB
ROBB & ROBB
4736 Beidlen Road
Willoughby, Ohio 44094

Attorneys for Plaintiff

Please take notice that defendant Brown & Sharpe Manufacturing Co., Inc. is hereby presenting for determination by the United States District Court for the North-

ern District of Ohio, Judge Ben C. Green, the following motion to dismiss the Complaint herein for failure of said Complaint to state a claim upon which relief can be granted.

M O T I O N

Defendant Brown & Sharpe Manufacturing Co., Inc. hereby moves this Court under Rule 12(b)(6), Federal Rules of Civil Procedure, to enter its Order and Judgement dismissing the Complaint herein on the ground that said Complaint fails to state a claim upon which relief can be granted. The reasons for granting this Motion are as follows:

(1) Plaintiff has sat on any claim he may have for about 23 years and is therefore barred from any recovery due to his laches.

(2) Because of the applicable statute of limitations plaintiff, even if not totally barred by his laches, would be entitled to recover damages for infringement committed only on either October 2 or October 3, 1967. Such damages are de minimus.

Respectfully submitted,

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